

FILED '08 NOV 05 13:57 USDC-ORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

RICHARD G. ORR,

Plaintiff,

Civil No. 07-3086-CL

v.

ORDER

OREGON STATE BOARD OF
PAROLE, et al.,

Defendants.

HOGAN, District Judge.

Plaintiff filed a complaint under 42 U.S.C. § 1983 alleging that defendants have violated his constitutional rights by designating Douglas County as the location of his required residence upon his release from custody.

Plaintiff has filed a Motion for Preliminary Injunction (#74) in which he alleges that he is now being released to

Linn County on November 14, 2008. Plaintiff seeks is to be "released back to the City of Portland, County of Multnomah." Motion for Preliminary Injunction (#74) p. 3.

The relevant factors for determining whether a preliminary injunction should issue were canvassed by the Ninth Circuit in United States v. Odessa Union Warehouse, 833 F.2d 172, 174 (9th Cir. 1987):

"The factors we traditionally consider in determining whether to grant a preliminary injunction in this circuit are (1) the likelihood of plaintiff's success on the merits; (2) the possibility of plaintiff's suffering irreparable injury if relief is not granted; (3) the extent to which the balance of hardships favors the respective parties; and (4) in certain cases, whether the public interest will be advanced by the provision of preliminary relief. Dollar Rent A Car of Washington Inc. v. Travelers Indemnity Company, 774 F.2d 1371, 1374 (9th Cir. 1985). To obtain a preliminary injunction, the moving party must show either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips in its favor. Benda v. Grand Lodge of the Int'l Ass'n of Machinists & Aerospace Workers, 584 F.2d 308, 314-15 (9th Cir. 1978), cert. dismissed, 441 U.S. 937, 99 S.Ct. 2065, 60 L.Ed.2d 667 (1979). These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. Oakland Tribune Inc. v. Chronicle Publishing Co.,

762 F.2d 1374, 1376 (9th Cir. 1985).

The moving party must show, at an irreducible minimum, that they have a fair chance of success on the merits. Stanley v. University of Southern California, 13 F.3d 1313, 1319 (9th Cir. 1994), quoting Martin v. International Olympic Committee, 740 F.2d 670, 674-675 (9th Cir. 1994); Committee of Cent. American Refugees v. I.N.S., 795 F.2d 1434, 1437 (9th Cir. 1986). This is so because the probability of success on the merits is the critical standard in determining the propriety of preliminary relief. Lancor v. Lebanon Housing Authority, 760 F.2d 361, 362 (1st Cir. 1985).

In this case, plaintiff has not established that he has a fair chance of success on the merits of his claim. In his complaint plaintiff alleges that he would be harmed by being released to Douglas County because of retaliation by Defendant Sparks, a "Field Officer of Douglas County ODOC Community Corrections Agency" [parole officer].

However, in his motion for preliminary injunction, plaintiff alleges that he is no longer being release to Douglas County. Therefore, plaintiff's concerns about defendant Sparks appear to be moot.

Plaintiff's complaint also alleged that he would be

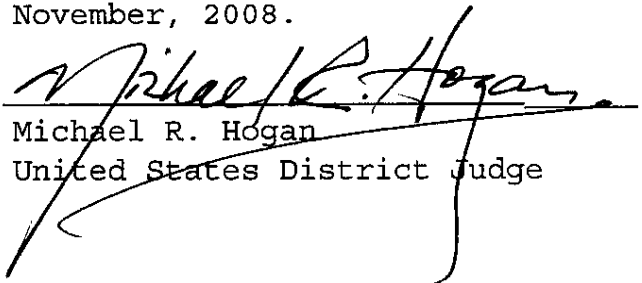
unable to obtain proper medical treatment in Douglas County. Plaintiff's motion for preliminary injunction alleges that he will be unable to receive proper medical treatment in Linn County. Plaintiff's allegations in this regard are unsupported by any evidence. Moreover there is nothing in the record that would suggest that plaintiff would be restricted from traveling from Linn County to Multnomah County for medical treatment.

Plaintiff apparently objects to being released to any county other than Multnomah County. However, plaintiff's release plan is consistent with the requirements of Oregon law and ODOC policy. See, Declaration of Mark Cadotte (#81).

Based on the foregoing, I find that plaintiff has failed to establish entitlement to preliminary injunctive relief. Plaintiff's Motion for Preliminary Injunction (#74) is denied.

IT IS SO ORDERED.

DATED this 5th day of November, 2008.


Michael R. Hogan
United States District Judge